



DELAWARE GENERAL ASSEMBLY
STATE OF DELAWARE
LEGISLATIVE HALL
DOVER, DELAWARE 19901

Adult Use Cannabis Task Force

**Wednesday, January 3, 2018
10:00a.m. – 12:00p.m.
House Chamber, Legislative Hall, Dover**

Task Force Members Present:

Representative Helene Keeley, House of Representatives
Senator Margaret Rose Henry, Delaware State Senate
Senator Bryant Richardson, Delaware State Senate
Representative Steve Smyk, House of Representatives
John Yeomans, Department of Safety & Homeland Security
John Sybert, Sussex County Advocate
Lossie Freeman, Mayor of City of Wilmington
Brendan O'Neill, Office of Defense Services
Mark Lally, Governor, Medical Marijuana Industry Rep.
Tim Holly, Delaware State Chamber of Commerce Employer Advocacy & Education Committee
Jermaine Hatton, Delaware League of Local Governments
Michelle Jacobs, Department of Natural Resources and Environmental Control (DNREC)
Cynthia Ferguson, New Castle County Advocate
Tom Donovan, Kent County Advocate
William Bryson Chief, Delaware Police Chiefs Council
Danielle Brennan, Attorney General
Robert Glen, State Bank Commissioner
Kenneth Bounds, Deputy Secretary, Department of Agriculture
Nicholas Biasotto, Medical Society of Delaware

Representative Helene Keeley, co-chair, called the meeting to order at 10:05 a.m. She took attendance and asked if all present had the opportunity to review the agenda for the day before asking if changes should be made to the minutes from the previous Task Force meeting held on Wednesday, December 6th.

Nicholas Biasotto, Medical Society of Delaware, asked to be included in the attendance portion of the previous meeting's minutes.

Rep. Keeley stated that the requested change would be duly marked. Nicholas Biasotto made a motion to accept the minutes from the meeting on Wednesday, December 6th with the change noted. The motion was seconded by Rep. Keeley and accepted by committee members present.

Rep. Keeley reviewed the purpose of HCR 52 and then discussed the recent legalization of recreational marijuana in California. She also laid ground rules for how the meeting would proceed before calling Deborah Gottschalk to the podium.

Deborah Gottschalk, General Assembly Division of Research Legislative Attorney, discussed the purpose and outline of the findings memo distributed to the Task Force at-large. She began by reviewing concerns raised throughout previous Task Force meetings that are already addressed by the proposed HB 110. Among these items, she stated that HB 110 would not undermine the federal Drug-Free Workplace Act and that, under lines 129-132, employers are not required to permit marijuana use at the workplace.

Tim Holly, Delaware State Chamber of Commerce Employer Advocacy & Education Committee, reiterated that, in a previous meeting, DSCC raised concerns in regards to language featured in HB 110 not being sufficient enough to specify that adverse employment actions are to be permissible in the case that, for example, an employee has any amount of cannabis in their system while in the workplace. More specifically, he stated that lines 129-132 do not truly address the DSCC's previously raised concern.

Deborah Gottschalk recommended that concerns pertaining to items that could be more specifically addressed by HB 110 be held off until she began her review of the appropriate section. She also noted that more specific concerns were addressed later on in the memo being reviewed. Additionally, lines 129-132 were read with an explanation that the language does not rescind an employer's ability to go forward with adverse employment actions in response to an employee's use of marijuana. Review of concerns already addressed by HB 110 was continued, one of these being a concern for language to be included that encourages Delaware residents, especially farmers and communities devastated by prohibition, to participate in the legal market.

Senator Bryant Richardson questioned language used by Deborah Gottschalk, specifically how farmers and communities could be devastated by prohibition. Ms. Gottschalk explained that she had restated language from related testimony in a previous committee and that the language was not featured in the actual legislation. Rep. Keeley confirmed that the language had come from a concern raised in a previous task force meeting and further explained that no one was then using this language.

Deborah Gottschalk concluded the review of concerns already addressed by HB 110 and began her review of concerns brought up in previous Task Force meetings that could be added to HB 110 or resolved through regulation. Such concerns included a request for the definition of "impaired by" and "under the influence", to which Deborah Gottschalk stated that "under the influence" would be the better option as definition for it already exists in Delaware Code, whereas this is not the case for "impaired by".

Tim Holly clarified that DSCCs position is for a wholesale change to the operative language of § 4905B, but in regards to language dealing with "impairment" and "influence" specifically, he stated that any adverse employment action should be permissible in the case that, for example, marijuana is found in an employee's system regardless of being deemed "impairment" or "under the influence". Rep. Keeley asked Mr. Holly if the DSCCs requested treatment is the same for

alcohol or some prescription drugs. Mr. Holly stated that the DSCC does not hold the belief that marijuana should be characterized as on par with alcohol or other drugs until there is evidence that proves otherwise. In regards to Rep. Keeley's question, he stated that the DSCC did not look into the issue of alcohol or prescription drugs.

Deborah Gottschalk continued review of the memo by stating that language could be added to HB 110 in order to define "workplace".

Tim Holly clarified concern by stating that the DSCC was unsure of what the words "in the work force" were intended to modify and that regardless of location of where marijuana is consumed, adverse employment action should be permissible.

Tom Donovan, Kent County Advocate, stated that it is unfair to stigmatize Delawareans that choose to consume a safer alternative to alcohol and that the language in HB 110 is satisfactory as employers already have the right to place rules and regulations on alcohol and marijuana consumption. Rep. Keeley responded to this by stating that the purpose of the Task Force is to allow members to voice their concerns in order for the legislators to determine necessary amendments to the bill, but that comments are appreciated.

Deborah Gottschalk continued review of items that could be added to HB 110 to address previous concerns. Among these, she discussed the possibility of adding language that could clarify employment provisions to provide the same immunity as employers have under any situation where an employee is under the influence of a drug at work be it legal or illegal. Tim Holly clarified that this concern was raised under the belief that employers should not be held liable for any injury perceived to be the cause of marijuana usage. Deborah continued the review and stated that under § 2751 of Title 21, false identification is already a crime.

Representative Steve Smyk asked for clarification in regards to Title 21 being used for false identification. Deborah Gottschalk stated that it is already a crime for false identification to be used in any circumstances under Title 21. Rep. Smyk clarified that Title 21 is motor vehicle code and that Title 11 may be more appropriate. Ms. Gottschalk explained her reasoning for using Title 21, however, Rep. Keeley stated that the title change suggestion would be noted and reviewed.

Deborah Gottschalk continued her review by discussing increased enforcement responsibilities and resources for the Department of Natural Resources and Environmental Control (DNREC). She stated that she was still in communication with DNREC about this topic. A representative for Kenneth Bounds, Department of Agriculture, commented that it may be helpful to consult the Department of Agriculture's Division of Forestry as well. Rep. Keeley stated that Ms. Gottschalk was discussing enforcement as opposed to pesticides and chemicals. Review of items that could be added to HB 110 concluded after Rep. Keeley and Deborah Gottschalk clarified that the point addressing a working group for implementation could be accomplished under the permanent oversight group.

Rep. Keeley opened the floor for questions, however none were raised.

Deborah Gottschalk introduced the third topic of the review: concerns presented previously that are beyond the scope of HB 110.

Tim Holly voiced his belief that the Task Force was meant to be broader and not solely focused on items inside the scope of HB 110. Rep. Keeley responded by saying that despite concerns being considered out of scope at the moment, they may still be addressed through amendments to the bill.

Senator Margaret Rose Henry, co-chair, added that this section would also be included in the final report which they would use to take recommendations in amending the bill.

Chief William Bryson, Delaware Police Chiefs Council, asked how many transactions could be made per week or per day. Rep. Keeley responded that this is not currently addressed in HB 110, but that she is aware of related reports coming from the state of Colorado and believes that excessive transaction numbers may be contributing to the black market there. She added that a reasonable transaction limit may be feasible to include in HB 110. Deborah Gottschalk expanded by saying that the current law allows for an individual to be in possession of only one ounce and that sellers of marijuana could then contact law enforcement if an individual were to attempt another purchase after exceeding the maximum for possession. Chief Bryson reiterated that, in Denver, individuals have made multiple transactions in a day without being identified. Rep. Keeley responded that this problem is due to a loophole in current Colorado law.

John Sybert, Sussex County Advocate, added to the discussion with his belief that the system in Colorado actually worked due to assailants being arrested and fined by law enforcement. Rep. Keeley affirmed these sentiments but also acknowledged that it may not be appropriate for an individual to have the ability to purchase marijuana several times daily. Mr. Sybert stated his belief that the purchase of marijuana should be similar to that of beer.

Lossie Freeman, a representative of the Mayor of City of Wilmington, asked for clarification on how the bi-annual fee for a state license to sell marijuana, established under HB 110, would function in conjunction with potential fees in municipalities and localities. Deborah Gottschalk explained that municipalities and localities could set additional fees separate to the state fee. Ms. Freeman asked if, without a cap, this provision could be used for localities to inflict exorbitant fees in order to bypass state law. Sen. Henry asked if Ms. Freeman's question was in regards to a municipality's right to tax, to which Ms. Freeman clarified that it had more to do with fees. Sen. Henry stated that a business would be required to have a state license. Rep. Keeley added that an individual would be required to have any necessary municipal or local license in addition to the state license. Ms. Gottschalk further added that there may be a loophole in the current language of the bill. Nicholas Biasotto questioned if additional business expenses, such as fees, could allow the black market to undercut the legal market. Rep. Keeley responded that there is already a black market and that many individuals are willing to purchase marijuana legally as opposed to illegally.

Deborah Gottschalk continued her review of items that are considered out of the scope of HB 110 in its current form and added comments on the formatting of the section.

Tim Holly reiterated that regardless of language used being “impaired by” or “under the influence of”, language should be included to allow employers the ability to take adverse employment action, for example, should any marijuana be found in an employee’s system.

Deborah Gottschalk continued by discussing that Title 19 regarding workers compensation is outside the scope of HB 110, however, she added that under Title 19, an individual is already disqualified from receiving workers compensation if injury occurs while intoxicated. Tim Holly stated that, under this language, any amount in an individual’s system should be deemed “intoxication” and should constitute just cause for termination of employment. On the point regarding specification of testing method for employees, Tim Holly clarified that the bill should provide more specific language to help guide employers. On the point regarding federal gun laws, Rep. Keeley pointed out that she believed a piece of legislation addressing the issue would appear during this legislative session and that this point could be taken off the list. Deborah Gottschalk continued with the review pointing out that data for current rates of DUI may be extracted if police officers are listing causes of impairment as marijuana related.

Danielle Brennan, Deputy Attorney General, clarified that quantifiable data on DUIs resulting from marijuana use is attainable. However, she added that the Department is concerned with DUI statutes, stating that they will have to be changed under HB 110 and, additionally, that there is no limit for marijuana consumption before classification as “under the influence” like there is for alcohol.

Deborah Gottschalk concluded her review of her memo on Task Force concerns.

Lossie Freeman asked if endangerment of children had been contemplated in the case that a child is left unattended by a parent seeking to purchase marijuana. Deborah Gottschalk explained that this case would fall under existing laws pertaining to child endangerment.

Rep. Keeley reiterated that the concerns presented would be included in the final report and that each would be taken seriously. Sen. Henry clarified that the report issued would be that of the Task Force. Rep. Keeley added that following steps would be to draft a report in preparation of the following Task Force meeting. Rep. Smyk requested that ample time be given to members to review the report. Rep. Keeley then turned the floor to public comment.

David Foster, former undercover narcotics detective under the Drug, Vice, and Organized Crime Unit of the DEA in Delaware and former SWAT officer of seven years, began his testimony. He reviewed his experience in drug enforcement and stated that he is in full support of HB 110. He discussed the lack of negative impact on cannabis users and the crime and violence resulting from the black market in Delaware. Mr. Foster noted that current violence is due to prohibition and that passing HB 110 would slash the black market dramatically. He additionally pointed to states such as New Jersey which are hopeful to legalize recreational marijuana and could potentially gain a profit from Delaware consumers seeking to purchase marijuana legally. He stated his belief that this could cause the state of Delaware to lose out on capital.

Rep. Keeley thanked David Foster for his comments.

John Sybert commented on workers protections and laws passed in Colorado that he claims seem to be working.

Rep. Keeley, seeing no additional comments, adjourned the meeting at 11:09am.

Attendance List:

1. Dave Foster
2. Jim Lardear (AAA)
3. Ken Grant (AAA)
4. Zoe Patchell (DE CAN)
5. Adam Rinaldi (DE CAN)
6. Glenn S. Condon (LMAMIDTA)
7. Christine Schultz (Parkowski Guerke & Swayze)
8. Debbie Hamilton (Hamilton Goodman)
9. Elizabeth Lewis (Hamilton Goodman)
10. Jamie Johnstone (Dept. of Finance)
11. Adam Rinaldi (DE CAN)
12. Kyra Hoffner (DE CAN)
13. Deputy Secretary Kimberly Chandler (Dept. of Safety & Homeland Security)
14. Debbie Gottschalk (Division of Research)